DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 01-0242; 02-0091; 02-0054
Indiana Sales and Use Tax
For the Tax Years 1994 through 1997

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ISSUES

I. Transportation Equipment Used to Move Work-in-Process.

Authority: IC 6-2.5-1-1 et seq.; IC 6-2.5-5-3(b); IC 6-2.5-5-27; IC 6-8.1-5-1(b); Indiana Dept. of State Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983); Panhandle Eastern Pipeline Co., v. Indiana Dept. of State Revenue, 741 N.E.2d 816 (Ind. Tax Ct. 2001); General Motors Corp. v. Indiana Dept. of State Revenue, 578 N.E.2d 399 (Ind. Tax Ct. 1991); 45 IAC 2.2-3-8; 45 IAC 2.2-5-8(f)(3); 45 IAC 2.2-5-8(f)(4).

According to taxpayer, the audit erred when it determined that equipment – used to transport work-in-process within its production facility and to move work-in-process to third-party processors – was subject to the gross retail tax. Alternatively, taxpayer maintains that it is engaged in "public transportation" and that certain of its equipment is entitled to the associated exemption.

II. Monitoring Equipment Used Within the Steel Production Process.

Authority: 45 IAC 2.2-5-8(b), (c); 45 IAC 2.2-5-8(g).

Taxpayer maintains that three categories of specialized equipment used within its steel production process – a data collection system, chart recorder and charts; and video camera and monitor – are integral to the control of that production process. According to taxpayer, the equipment is not subject to the state's gross retail tax.

III. Strapping Dispenser and Banding Tool.

Authority: 45 IAC 2.2-5-8(b); 45 IAC 2.2-5-8(d).
Taxpayer maintains that its strapping dispenser and associated banding tool, used to secure coils of steels, are exempt from sales and use tax.

IV. Materials and Equipment Used to Meet Environmental Control Requirements.

Authority. IC 6-2.5-5-30; 45 IAC 2.2-5-70; The American Heritage Dictionary of the English Language (4th ed. 2000).

Taxpayer protests the audit's determination that the purchase of tangible personal property used to meet environmental control requirements is subject to sales and use tax.

V. Gross Retail and Use Tax on Materials Incorporated Into Realty - Direct Payment Permits Issued to Contractors.

Authority: IC 6-2.5-8-9(b); 45 IAC 2.2-4-22(e).

Taxpayer argues that, having permitted various contractors to use its "direct pay permit," it is not responsible for sales or use taxes on those purchases.

VI. Abatement of the Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer asks that the Department exercise its discretion to abate the ten-percent negligence penalty.

STATEMENT OF FACTS

Taxpayer manufactures rolled steel sheets at three locations. One of the three manufacturing sites is located within Indiana. An audit investigation was conducted resulting in an additional assessment of sales and use tax. Taxpayer protested a number of those additional assessments. An administrative hearing was conducted, and this Letter of Findings follows.

DISCUSSION

I. Transportation Equipment Used to Move Work-in-Process.

Taxpayer argues that certain of its transportation equipment is entitled to an exemption from the state's sales and use taxes.

In Indiana, a sales tax is imposed on retail transactions and a complementary use tax is imposed on tangible personal property that is stored, used, or consumed in the state. IC 6-2.5-1-1 et seq. In this instance, taxpayer invokes a regulatory exemption, 45 IAC 2.2-5-

8(f)(3), which states as follows: "Transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process."

Taxpayer purchased certain equipment which is employed in transporting coils of finished and semi-finished steel. According to taxpayer, because this equipment is used in transporting "work-in-process," it is not subject to sales or use tax.

A. Railroad Turnouts:

Taxpayer maintains that its purchase of material used to construct "railroad turnouts" comes within the purview of the exemption. The "railroad turnouts" are sections of railroad track located at taxpayer's Indiana manufacturing site. According to taxpayer, the turnouts are exclusively used to transport unfinished steel from its out-of-state manufacturing sites to the Indiana location.

The dispute was originally framed as an issue of whether the turnouts are taxable "transportation equipment" under 45 IAC 2.2-5-8(f)(3) or – as taxpayer contends – exempt "real property." However, classification of the turnouts as either real or personal property is irrelevant because, inter alia, taxpayer is responsible for use tax on the materials used to construct the turnouts. As set out in 45 IAC 2.2-3-8:

> The conversion of tangible personal property into realty does not relieve the taxpayer from a liability for any owing and unpaid state gross retail tax or use tax with respect to such personal property. All construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon disposition unless the ultimate recipient could have purchased it exempt.

Taxpayer is the "ultimate recipient" of the materials used to construct the railroad turnouts. Because there is no indication taxpayer was "exempt" at the time it acquired the turnouts, and because there is no indication that the contractor paid sales tax at the time *it* acquired the materials, taxpayer is subject to use tax under 45 IAC 2.2-3-8.

In addition, taxpayer has failed to demonstrate that the railroad turnouts are used to transport "work-in-process." Even if – as taxpayer contends – the turnouts are exclusively used to transport unfinished steel from its out-of-state manufacturing sites to its Indiana facility, the exemption is not available for "[t]ransportation equipment used to work-in-process, semi-finished, or finished goods between plants . . . if the plants are not part of the same integrated production process." 45 IAC 2.2-5-8(f)(4). Taxpayer has failed to establish that its out-of-state manufacturing sites and the Indiana facility operate in such a way as to form a seamless manufacturing operation sufficient to justify exempting each and every item of equipment found within that integrated operation.

B. Over-the-Road Transportation Vehicles:

One of taxpayer's operating divisions acquired a number of trucks and, thereafter, operated as a transportation company. Taxpayer uses these trucks to transport its steel coils from its Indiana manufacturing facility to third-party processors. The third-party processors perform various operations required by the taxpayer's customers. These operations include cutting, slitting, and coating the steel coils. After these operations are complete, the third-party processors then package the coils and ship them to customers.

The audit concluded that the trucks were not entitled to an exemption because they were not transporting work-in-process. Specifically, the audit report stated that, "The movement of these rolls to a third-party processor for completion or further processing places the goods outside of [taxpayer's] integrated production process and into a third-party processor's production process."

Taxpayer disagrees taking the position that its "integrated production process" is not complete until the steel coils are transported to the third-party processors and that the work performed by the third-party processors is an "essential and integral part" of its production of rolled carbon steel. According to taxpayer, its own production process is not complete until the "most marketable product" is produced. To that end, taxpayer cites a number of authorities including Indiana Dept. of State Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983) and General Motors Corp. v. Indiana Dept. of State Revenue, 578 N.E.2d 399 (Ind. Tax Ct. 1991). Taxpayer is correct in that both cases deal with issues associated with transporting work-in-process between different stages of the appellant taxpayers' manufacturing process. However, in Cave Stone, the court found that appellant taxpayer's transportation equipment was exempt because the equipment was being used *within* that taxpayer's own production process whereby it manufactured crushed stone. Cave Stone 457 N.E.2d at 521, 523. Similarly, in General Motors, the court found that packaging materials – used to transport automobile parts from the manufacturer's component plants to its own final assembly plants – was entitled to the exemption, because the materials were employed within the manufacturer's integrated manufacturing process. General Motors, 578 N.E.2d at 402, 404.

The production equipment exemption is found at IC 6-2.5-5-3(b) which states as follows:

> Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Taxpayer argues for an interpretation of the exemption statute which would allow it to claim an exemption for equipment used to deliver its steel coils to third-party processors. Taxpayer maintains that to deny the exemption is "illogical."

There is no dispute that taxpayer is involved in the manufacture and production of steel products and that certain equipment used *within* its manufacturing facilities is entitled to the exemption. It may even be reasonably assumed that the third-party processors are also entitled to claim an exemption for equipment used to transport work-in-process within *its* manufacturing process. However, the regulation does not permit the application of the exemption to include trucks used to transport taxpayer's steel to its third-party processors once that steel leaves taxpayer's own facility.

Specifically, 45 IAC 2.2-5-8(f)(3) states that "[t]ransportion equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process." The taxpayer's trucks are not entitled to this exemption because there is no indication that the trucks are used to move the steel within taxpayer's "production process." Even if the third-party processors were not independent vendors but were one of taxpayer's own remote facilities, there is still no assurance that that the trucks would be entitled to the exemption because there is no indication that taxpayer's manufacturing plant and the remote processors would together form "one continuous integrated production process for the purpose of exemption from sales/use tax." General Motors, 578 N.E.2d at 402. As specified in 45 IAC 2.2-5-8(f)(4), "Transportation equipment used to transport work-in-process, semi-finished, or finished goods between plants is taxable, *if the plants are not part of the same integrated production process.*" (*Emphasis added*).

Alternatively, taxpayer argues that the trucks are exempt from tax under IC 6-2.5-5-27 which states that "[t]ransactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation or property." In interpreting that exemption, the Indiana Tax Court has stated that, "If a taxpayer acquires tangible personal property for predominate use in providing public transportation for third parties, then it is entitled to the exemption. If a taxpayer is not predominately engaged in transporting the property of another, it is not entitled to the exemption." Panhandle Eastern Pipeline Co., v. Indiana Dept. of State Revenue, 741 N.E.2d 816, 819 (Ind. Tax Ct. 2001).

Taxpayer is not entitled to claim the exemption because it is simply transporting its own steel coils and because taxpayer, as a steel manufacturer, is not predominantly engaged in the business of providing "public transportation." Nonetheless, taxpayer counters by arguing that the trucks are owned by an independent division which services the vehicles and maintains its own books and records. Perhaps so. In which case, taxpayer fails to explain on what basis it is entitled to claim the sales and use tax exemption for trucks belonging to an entirely independent entity.

C. Crane and Flatbed Trucks.

Taxpayer argues that a crane and two of its flatbed trucks are used to move work-in-process and are entitled to an exemption from sales and use tax.

The audit performed a "crane study" to determine the extent to which taxpayer's cranes were used in a taxable and exempt manner. The audit report stated, "Cranes that move finished goods, raw materials, or perform maintenance duties are taxable, while those that move work-in-process are exempt." In addition, the audit conducted a "mobile equipment study" to determine both the taxable and exempt usage for taxpayer's vehicles. According to the audit report, "This study indicated that taxpayer's trucks and tractors were being used in various ways," and concluded that taxpayer's trucks and tractors "moving work-in-process were exempted or partially exempted pursuant to 45 IAC 2.2-5-8. However, those pieces of equipment performing maintenance duties or movement of furnished goods are fully or partially taxable." For example, the audit concluded that one of taxpayer's "Semi-Tractors" was 95 percent exempt and that a particular "Mobile Crane" was 80 percent exempt.

The results of both the crane study and the mobile equipment were reviewed by the taxpayer. In both instances, the audit report indicates that the taxpayer "agree[s] with the percentages determined by the study."

In its protest, taxpayer cites to a "crane and two flatbed trucks" indicating that this equipment "is used 100% of the time to transport exempt work-in-process." Taxpayer maintains that it has "verified that the crane and flatbed trucks are used to transport work-in-process goods from the [taxpayer's] facility to its own vehicles or, in less frequent instances, between production steps on [taxpayer's] property."

Taxpayer has failed to meet the burden of proof necessary to overcome the presumption of correctness attached to the original audit report and consequent assessment pursuant to IC 6-8.1-5-1(b). "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Id. The audit report indicates that the proposed assessment is based on a detailed and rational consideration of the exempt and non-exempt use of taxpayer's transportation equipment. The report also indicates that – at least initially – taxpayer agreed with the report's conclusions concerning each specific piece of equipment. Taxpayer's bare assertion, that it later verified that the crane and flatbed trucks are exclusively used in a tax exempt manner, does not permit the Department to set aside the conclusions reached in the original audit report.

FINDING

Taxpayer's protest is respectfully denied.

II. Monitoring Equipment Used Within the Steel Production Process.

Taxpayer purchased certain equipment used to monitor its steel production process. The audit determined that this equipment was not directly employed in the direct production

of the steel and denied taxpayer's claim that the monitoring equipment was exempt from sales and use tax.

Taxpayer argues that the regulations permit the equipment to be classified as "exempt." To that end, taxpayer cites to 45 IAC 2.2-5-8(b), (c) which states as follows:

> The state gross retail tax does not apply to sales of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property. The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

Taxpayer seeks the manufacturing exemption for three categories of monitoring equipment. The first category consists of a chart recorder and paper for the chart recorder. This equipment is used to monitor production along taxpayer's galvanized steel manufacturing line. The recorder is attached to the production line and provides the operators with information on the speed of the line as well as the electricity used in the production process. According to taxpayer, the operators use this information to adjust the galvanized steel production line.

The second category consists of video equipment. The video camera is located over the steel production line and transfer images to video monitors visible to the production line personnel. According to taxpayer, the production line personnel use the monitoring equipment to control the speed of the production line, ensure that the coil is moving properly through the production process, and ensure that the steel is free from defects.

The third category consists of a data collection system which tracks information on utilities – primarily water and steam – consumed in the steel production process. The data collection system gathers information on the ph, flow, and temperature of the water and steam. Taxpayer's personnel monitor this data and adjust the production line to ensure that the steel being produced meets certain quality specifications. According to taxpayer, without the data collection system, it would be unable to produce marketable steel.

Taxpayer has failed to demonstrate that this monitoring equipment has a direct and immediate effect on the steel being produced. It would appear that the monitoring equipment operates in a manner removed at least one step from the actual production of the steel; the monitoring equipment does not directly function to change the form, composition, or marketability of the steel. Undoubtedly, all of the monitoring equipment plays an important part in the production of taxpayer's steel. However, as noted in 45 IAC 2.2-5-8(g), "The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required . . . by practical

necessity does not itself mean that the property 'has an immediate effect upon the article being produced.'"

FINDING

Taxpayer's protest is respectfully denied.

III. Strapping Dispenser and Banding Tool.

Taxpayer purchased a strapping dispenser and a banding tool. This equipment is used to wrap a band of steel strapping around coils of steel in order to ensure that the steel remains coiled during shipping and delivery.

Taxpayer maintains that the strapping dispenser and banding tool operate within its continuous production process and, under 45 IAC 2.2-5-8(b), (d), the equipment is exempt from sales and use tax. The regulation provides in relevant part:

> The state gross retail tax does not apply to sales of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property.
>
> Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

Taxpayer is in the business of producing steel coils, and its customers are interested in obtaining that steel. Therefore, the object of a taxpayer/customer transaction is the transfer of the steel coils from manufacturer to consumer. The steel strapping facilitates the transfer of the steel but is not the *object* of the transaction. The fact that steel strapping accompanies the coils of steel is entirely tangential to the purchase of the steel. Whether the coils of steel were bound with chains, contained in a wooden crate, or even tack-welded in a "closed" position is irrelevant to the customer.

Accordingly, the application of the steel strapping occurs after taxpayer's production activity "has altered the [steel coil] to its completed form . . . ." 45 IAC 2.2-5-8(d). Because the taxpayer uses the strapping dispenser and banding tool after taxpayer's production activity is complete, taxpayer was not entitled to claim the exemption at the time taxpayer acquired that equipment.

FINDING

Taxpayer's protest is respectfully denied.

IV. Materials and Equipment Used to Meet Environmental Control Requirements.

Taxpayer made certain purchases associated with its environmental regulation compliance efforts. Specifically, taxpayer purchased slag used to build roads located within its landfill. Taxpayer purchased a tank to hold the sodium bisulfate used to treat contaminated lake water. The audit determined that neither the purchase of the slag or tank was exempt from sales and use tax.

The Indiana Code exempts the purchase of certain environmental control equipment from the state's sales and use tax. IC 6-2.5-5-30 provides as follows:

> Sales of tangible personal property are exempt from the state gross retail tax if: (1) the property constitutes, is incorporated into, or is consumed in the operation of a device, facility, or structure predominantly used and acquired for the purpose of complying with any state, local, or federal environmental quality statutes, regulations, or standards; and (2) the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining, or agriculture.

The Department promulgated a regulation to assist in the application of the statute. 45 IAC 2.2-5-70 states, in relevant part, as follows:

> The state gross retail tax does not apply to sales of tangible personal property which constitutes, is incorporated into, or is consumed in the operation of, a device, facility, or structure predominately used and acquired for the purpose of complying with any state, local or federal environment [quality] statutes, regulations or standards; and the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining, or agriculture. (1) Consumed as used in this regulation . . . means the dissipation or expenditure by combustion, use or application and does not mean or include the obsolescence, discarding, disuse, depreciation, damage, wear or breakage of tools, machinery, devices or furnishings. (2) Incorporated as used in this regulation . . . means the material must be physically combined into and become a component of the environmental quality device, facility, or structure. The material must constitute a material or integral part of the finished product.

Taxpayer builds roads into its landfill site in order to make possible the disposal of certain waste products associated with the production of steel. It is not disputed that, in order to operate this landfill, taxpayer must adhere to regulations and guidelines established by the Environmental Protection Agency and the Indiana Department of Environmental Management. For example, the landfill must be constructed in such a way as to insure that groundwater is not contaminated. There is no contention that the roads are used in a dual capacity, i.e. the roads are used to transport material to the landfill and also used to transport raw material to taxpayer's production facility.

The audit denied the exemption because the "slag for the roads [did] nothing for the functionality of the landfill . . . the roads [did] not directly affect how wastes are disposed of."

The term "facility" is defined as, "Something created to serve a particular function." The American Heritage Dictionary of the English Language (4th ed. 2000). Taxpayer's landfill is an environmental "facility" built and operated in order to comply with state and federal environmental regulations. The landfill was not built as an expedient means for disposing of unwanted or hazardous materials. But for the state and federal regulations, taxpayer would not have built the landfill or would not have built the landfill in the manner it which was actually constructed. Taxpayer's roads are an integral part of the landfill facility, are physically "incorporated" into that facility, and form a "component part of the environmental . . . facility." Therefore, under IC 6-2.5-5-30 and 45 IAC 2.2-5-70, taxpayer's purchase of the slag is exempt from sales and use tax.

Taxpayer purchased a storage tank which, pursuant to the environmental equipment exemption, taxpayer argues is exempt from sales and use tax. Taxpayer maintains that it purchased the tank in order to comply with state and federal environmental regulations.

During the steel manufacturing process, taxpayer uses quantities of chlorinated lake water to cool its production equipment and its work-in-process steel coils. Before taxpayer returns the lake water to its original source, taxpayer is required to remove the chlorine. Taxpayer mixes the wastewater with sodium bisulfate to neutralize the chlorine. Prior its use in this treatment process, the sodium bisulfate is stored in a tank. It is this particular storage tank which is the subject of taxpayer's protest.

It is not disputed that the chlorine removal is mandated by state and federal environmental regulations. It is not disputed that that the tank is used only for the storage of sodium bisulfate and that the sodium bisulfate is used exclusively for the treatment of wastewater. However, the audit denied the exemption because the tank was "merely a storage tank holding raw chemicals for eventual introduction into the wastewater treatment process . . . ."

Taxpayer operates an elaborate system of pipes, equipment, and structures in order to process and treat lake water both at the time the water is first introduced into its manufacturing plant and at the time the wastewater is returned to the lake. It is apparent that the sodium bisulfate tank is "incorporated into" the taxpayer's treatment facility and that the treatment facility is operated predominately "for the purpose of complying with . . . state, local, or federal environmental quality statutes, regulations or standards . . . ." IC 6-2.5-5-30. Accordingly, taxpayer's purchase of the sodium bisulfate storage tank is exempt from sales and use tax under IC 6-2.5-5-30 and 45 IAC 2.2-5-70.

FINDING

Taxpayer's protest is sustained.

V. **Gross Retail and Use Tax on Materials Incorporated Into Realty** - Direct Payment Permits Issued to Contractors.

Taxpayer protests the assessment of sales tax on materials incorporated into its real property.

During the period of time covered by the audit report, taxpayer maintains that it issued its direct pay permit to various contractors hired to make improvements to taxpayer's realty. The direct pay permit is issued by the state and allows the taxpayer to acquire tangible personal property without the immediate necessity of paying sales tax. IC 6-2.5-8-9(b). Thereafter, at the time when taxpayer determines the use and taxability of the tangible personal property, the taxpayer "must then pay the tax on that purchase directly to the department." Id.

Taxpayer's direct pay permit reads in part as follows: "Direct pay permits may be issued to contractors on lump sum contracts for the improvements of realty if the contractor supplies a breakdown of the costs of the materials. If no breakdown of the cost of the materials is available, the contractor will be liable for tax on the materials."

Taxpayer argues that it is not subject to use tax liability for those transactions for which taxpayer either issued a purchase order or contracted for an improvement to taxpayer's realty on the basis of lump sum contracts. 45 IAC 2.2-4-22(e) states as follows:

> With respect to construction material a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner: (1) He converts construction material into realty on land he owns and then sells the improved real estate; (2) He utilizes the construction material for his own benefit; or (3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price. A disposition under [(3) Lump sum contract] will be exempt from the use tax if the contractor received a valid exemption certificate from the ultimate purchaser or [recipient] of the construction material (as converted), provided such person could have initially purchased such property exempt from the state gross retail tax.

The taxpayer issued the direct pay permit to its contractors in order to permit the contractors to acquire various building materials tax-free. In each of the transactions at issue, the contractor – having received taxpayer's direct pay permit – purchased the material tax free. However, there is no indication that taxpayer ever established that any of the materials would be used in a tax-free manner. Taxpayer may not employ its direct pay permit – issued entirely for taxpayer's convenience – in a manner for which it was never intended.

FINDING

Taxpayer's protest is respectfully denied.

VI. Abatement of the Ten-Percent Negligence Penalty.

Taxpayer protests the assessment of the ten-percent negligence penalty on the amount of tax deficiency determined at the time of the original audit.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . ."

Taxpayer has presented evidence sufficient to establish to establish that its failure to pay the deficiency was due to reasonable cause and not due to willful neglect.

FINDING

Taxpayer's protest is sustained.

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